

## REMARKS

It has been noted that the specification lacks a specific reference to the provisional application from which it claims benefit. Fortunately, however, the reference to the provisional application was made in the declaration and other filing papers, so that the priority claim was recognized on the Filing Receipt in this case.

Per the PTO's OG Notice dated 18 March 2003 relating to claiming the benefit of a prior-filed application, since this is a case where the PTO recognized the priority claim and included it on the Filing Receipt, a separate petition and surcharge are not necessary. The relevant portion of that OG Notice is provided below.

Part IV: Office Practice to Not Require Petition and  
Surcharge if Benefit Claim is Not Present in the Proper Place But is  
Recognized By Office Continues But Applicants Are Advised That Proper  
Reference Must be Presented

The reference required by 37 CFR 1.78(a)(2) or (a)(5) must be included in an application data sheet (37 CFR 1.76), or the specification must contain, or be amended to contain, such reference in the first sentence following the title. Previously, the Office indicated that if an applicant includes a benefit claim in the application but not in the manner specified by 37 CFR 1.78(a) (e.g., if the claim is included in an oath or declaration or the application transmittal letter) within the time period set forth in 37 CFR 1.78(a), the Office will not require a petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) to correct the claim if the information concerning the claim was recognized by the Office as shown by its inclusion on the filing receipt. If, however, a claim is included elsewhere in the application and not recognized by the Office as shown by its absence on the filing receipt, the Office will require a petition and the surcharge to correct the claim. See Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication Provisions, 66 Fed. Reg. 67087,

67089-90 (Dec. 28, 2001). The Office will continue to follow this practice.

Accordingly, it is respectfully requested that this Amendment be entered.

Respectfully submitted,

MARSH FISCHMANN & BREYFOGLE LLP

By: /Robert G. Crouch/

Robert G. Crouch  
Registration No. 34,806  
3151 South Vaughn Way, Suite 411  
Aurora, Colorado 80014  
(720) 562-5506

Date: August 18, 2006